

DA 97-2297

DISPATCHED BY

)

)

)

)

(Proceeding Terminated)

Released: October 31, 1997

i.

Background

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's [permittee's] transmitter, the licensee [permittee] shall either immediately reduce the power to the point of no interference, cease operations, or take such immediate corrective action as necessary to eliminate the harmful interference.

As such, Cromwell Group concludes that deletion of this allotment would be both consistent with prior Commission actions and in accordance with MJB's proposed modification of its construction permit.

Discussion

4. We deny the Petition for Reconsideration. We do not believe that it would be in the public interest to first undertake a proceeding looking toward revocation of the Station WNPL construction permit and then undertake a separate proceeding to delete the underlying allotment. Instead, under the circumstances of this case, the preferable course of action is to reallocate Channel 294A to Belle Meade which will lead to a prompt resumption of service by Station WNPL.¹ We will discuss the reasons for this action below.

5. At the outset, our earlier action reallocating Channel 294A to Belle Meade does not conflict with the actions cited by Cromwell Group in which defective allotments were deleted. None of those actions involved an outstanding construction permit. Those actions merely recognized that a construction permit could not be granted for the allotment and, as such, service could never be provided. In those proceedings, deletion of the allotment and the possible institution of service made possible by that deletion was the only means to provide service to the public. In this proceeding, service could be provided on Channel 294A if we modified an outstanding construction permit to specify a new community of license at a new site. We continue to believe that this action will best serve the public interest because it will lead to a predictable and prompt institution of service.

6. This action is also consistent with Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989); recon granted in part, 5 FCC Rcd 7094 (1990), in which the Commission established a procedure for a licensee or permittee to change its community of license and have its authorization modified accordingly. Under Community of License, MJB is entitled to have the Station WNPL community of license changed if the resulting reallocation will result in a preferential arrangement of channels. In this situation, that determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).² It continues to be our view that a Channel 294A allotment at Belle Meade is preferable to a defective allotment at Mt. Juliet under Priority 4, infra.

7. Finally, we reject the argument that the reallocation action in this proceeding was inconsistent with a proposed condition on the MJB construction permit. In addition to the public interest benefits discussed above, we also believe that a reallocation of Channel 294A was, in fact, consistent with the proposed condition. Reallocating Channel 294A to a new community and at a new site that would not cause EMI is within the ambit of taking "such immediate corrective action as necessary to eliminate the

¹As a result of a complaint of interference to air navigation, Station WNPL voluntarily terminated operation on November 7, 1996.

²The FM allotment priorities are as follows: 1) First fulltime aural service; 2) Second fulltime aural service; 3) First local service; and 4) Other public interest matters. Co-equal weight is given to Priorities 2 and 3.

harmful interference."

8. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by The Cromwell Group, Inc. IS DENIED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177

FEDERAL COMMUNICATIONS COMMISSION

**Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau**